

Introduced by Senator BenoitFebruary 18, 2009

An act to amend Section 510 of, and to add Section 511.5 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 187, as introduced, Benoit. Employment: working hours.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by $\frac{2}{3}$ of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This bill would permit an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow an employer to implement this schedule without any obligation to pay overtime compensation. The bill would require the Division of Labor Standards Enforcement in the Department of Industrial Relations to enforce this provision and adopt regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Workplace Flexibility Act of 2009.
- 3 SEC. 2. The Legislature finds and declares all of the following:

1 (a) Small businesses and their workers suffer from outdated and
2 inefficient workplace and overtime rules that do not allow for
3 sufficient flexibility for employers and workers to schedule their
4 hours of work for mutual benefit.

5 (b) California overtime laws, which are unique in the country,
6 make it difficult for most employers to reach an agreement with
7 an individual worker that would allow a flexible work schedule.

8 (c) Existing law does not permit an employer to allow an
9 individual worker to choose a flexible work schedule of four
10 10-hour days per week without overtime being paid.

11 (d) As a consequence, millions of California workers do not
12 have the opportunity to take advantage of a flexible work schedule
13 that would benefit the workers and their families.

14 (e) Permitting workers to elect to work four 10-hour days per
15 week without the payment of overtime would allow them to spend
16 much-needed time with their families, lessen traffic congestion on
17 our crowded roads and highways, allow workers to spend one day
18 a week on personal matters, such as volunteering at a child's
19 school, scheduling medical appointments, and attending to other
20 important family matters that often are difficult to schedule with
21 a five-day-per-week, eight-hour-per-day schedule.

22 (f) It is the intent of the Legislature in enacting the Workplace
23 Flexibility Act of 2009 to protect workers as follows:

24 (1) A worker may not be forced to work more than eight hours
25 in a day without receiving overtime, but, instead, he or she may
26 request a flexible work schedule of up to four 10-hour days per
27 week and an employer may agree to this schedule without having
28 to pay overtime for the ninth and tenth hours worked per day in
29 that schedule.

30 (2) An employer will be required to pay overtime rates after 10
31 work hours in a day for workers who have chosen a flexible
32 schedule pursuant to this act.

33 (3) An employer will be required to pay double normal pay after
34 12 work hours in a day for a worker who has chosen a flexible
35 schedule under this act.

36 (4) Any worker, including one who chooses a flexible schedule
37 under this act, will receive overtime for any hours worked over 40
38 hours in a single week.

39 (g) Workplaces that are unionized already allow workers to
40 choose to work four 10-hour days; however, it is virtually

1 impossible for workers of nonunionized workplaces to enjoy this
2 benefit.

3 (h) No compelling public policy reason exists for this
4 discrepancy in the flexibility of work schedules between unionized
5 and nonunionized workers.

6 SEC. 3. Section 510 of the Labor Code is amended to read:

7 510. (a) Eight hours of labor constitutes a day's work. Any
8 work in excess of eight hours in one workday and any work in
9 excess of 40 hours in any one workweek and the first eight hours
10 worked on the seventh day of work in any one workweek shall be
11 compensated at the rate of no less than one and one-half times the
12 regular rate of pay for an employee. Any work in excess of 12
13 hours in one day shall be compensated at the rate of no less than
14 twice the regular rate of pay for an employee. In addition, any
15 work in excess of eight hours on any seventh day of a workweek
16 shall be compensated at the rate of no less than twice the regular
17 rate of pay of an employee. Nothing in this section requires an
18 employer to combine more than one rate of overtime compensation
19 in order to calculate the amount to be paid to an employee for any
20 hour of overtime work. The requirements of this section do not
21 apply to the payment of overtime compensation to an employee
22 working pursuant to any of the following:

23 (1) An alternative workweek schedule adopted pursuant to
24 Section 511.

25 (2) *An employee-selected flexible work schedule adopted*
26 *pursuant to Section 511.5.*

27 ~~(2)~~

28 (3) An alternative workweek schedule adopted pursuant to a
29 collective bargaining agreement pursuant to Section 514.

30 ~~(3)~~

31 (4) An alternative workweek schedule to which this chapter is
32 inapplicable pursuant to Section 554.

33 (b) Time spent commuting to and from the first place at which
34 an employee's presence is required by the employer shall not be
35 considered to be a part of a day's work, when the employee
36 commutes in a vehicle that is owned, leased, or subsidized by the
37 employer and is used for the purpose of ridesharing, as defined in
38 Section 522 of the Vehicle Code.

39 (c) This section does not affect, change, or limit an employer's
40 liability under the workers' compensation law.

1 SEC. 4. Section 511.5 is added to the Labor Code, to read:

2 511.5. (a) Notwithstanding Section 511 or any other law or
3 order of the Industrial Welfare Commission, an individual
4 nonexempt employee may work up to 10 hours per workday
5 without any obligation on the part of the employer to pay an
6 overtime rate of compensation, except as provided in subdivision
7 (b), if the employee requests this schedule in writing and the
8 employer approves the request. This shall be referred to as an
9 overtime exemption for an employee-selected flexible work
10 schedule.

11 (b) If an employee-selected flexible work schedule is adopted,
12 the employer shall pay overtime at one and one-half times the
13 employee's regular rate of pay for all hours worked over 40 hours
14 in a workweek or over 10 hours in a workday, whichever is the
15 greater number of hours. All work performed in excess of 12 hours
16 per workday and in excess of eight hours on a fifth, sixth, or
17 seventh day in the workweek shall be paid at double the employee's
18 regular rate of pay.

19 (c) An employer may inform its employees that it is willing to
20 consider an employee request to work an employee-selected
21 flexible work schedule, but shall not induce a request by promising
22 an employment benefit or threatening an employment detriment.

23 (d) An employee or employer may discontinue the
24 employee-selected flexible work schedule at any time by giving
25 written notice to the other party. The request will be effective the
26 first day of the next pay period or the fifth day after notice is given
27 if there are fewer than five days before the start of the next pay
28 period, unless otherwise agreed to by the employer and the
29 employee.

30 (e) This section does not apply to any employee covered by a
31 valid collective bargaining agreement or employed by the state, a
32 city, county, city and county, district, municipality, or other public,
33 quasi-public, or municipal corporation, or any political subdivision
34 of this state.

35 (f) This section shall be liberally construed to accomplish its
36 purposes.

37 (g) (1) The Division of Labor Standards Enforcement shall
38 enforce this section and shall adopt or revise regulations in a
39 manner necessary to conform and implement this section.

1 (2) This section shall prevail over any inconsistent provisions
2 in any wage order of the Industrial Welfare Commission.
3 SEC. 5. The provisions of this act are severable. If any
4 provision of this act or its application is held invalid, that invalidity
5 shall not affect other provisions or applications that can be given
6 effect without the invalid provision or application.

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